TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 256.

WATSON STEWART, APPELLANT,

vs.

THE UNITED STATES AND THE OSAGE NATION OF INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 16, 1906.

(20,199.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1906.

In the Court of Claims.

No. 23216.

WATSON STEWART
v.
THE UNITED STATES and the OSAGE NATION OF INDIANS.

I.—*Petition.*

Filed March 20, 1903.

the Honorable the Court of Claims:

The claimant, Watson Stewart, respectfully represents:

1. The claimant is a resident of the City of Davenport, in the unty of Scott, in the State of Iowa, and brings this suit under the lowing provision of the act entitled "An Act making appropria-ons for the current and contingent expenses of the Indian Depart-nt and for fulfilling treaty stipulations with various Indian tribes the fiscal year ending June thirtieth, nineteen hundred and four, d for other purposes," Approved March 3, 1903:

"SECTION 13. That any one or more of the registers and receivers the United States land offices in the State of Kansas upon whom s imposed the responsibility of making sale and disposal of the age ceded, Osage trust, and Osage diminished reserve land, in said ate, under the treaty of September twenty-ninth, eighteen hun-ed and sixty-five, between the United States and the Osage Indians, and the acts of Congress for carrying said treaty into effect, may bring suit in the Court of Claims against the Osage Nation and the United States to determine the claim of e plaintiff or plaintiffs for commissions or compensation for e sale of said lands or any service or duty connected therewith. nd the said court shall have jurisdiction to hear and determine d cause and to render judgment thereon on the merits; and e Attorney-General shall appear on behalf of the United States d the Osage Nation, and either party feeling aggrieved at the cision of the Court of Claims may appeal to the Supreme Court the United States, and the final judgment in such case shall termine the rights of all such registers and receivers similarly uated. Said Osage Nation may also appear in said suit by attorney employed with the authority of said nation. The urt of Claims shall have full authority, by proper orders and pro-s, to make parties to any such suit all persons whose presence in e litigation it may deem necessary or proper to the final determi-tion of the matter in controversy."

2. The claimant was duly appointed register of the United States nd office at Humboldt, in the State of Kansas, and took the oath office and entered upon the discharge of his duties as such register

on the first day of April in the year 1869, and continued to be such register until the twentieth day of November in the year 1871.

3. His duties as register of the said land office were prescribed and defined by the Statutes of the United States, and consisted of services in the disposal of the public lands of the United States. He performed said services as register during the term of his office as required by law, and no compensation for any duties or services in disposing of the public lands of the United States is charged in the claim for which this suit is brought.

4. While performing his duties as register of the United States land office at Humboldt, Kansas, the Secretary of the Interior, through the Commissioner of the General Land Office, required the claimant to perform the further duty of assisting to dispose
3 of the Osage ceded and Osage trust and diminished reserve lands. The claimant performed such duty as required of him and assisted as register of said land office in the disposal of said Osage ceded and Osage trust and diminished reserve lands, but no fees or commissions, or expenses were allowed and paid him therefor, except that a small amount was allowed him for the purpose of making up his maximum legal compensation, for which amount due credit is hereinafter given in the tabulated statement contained in paragraph 12 of this petition.

5. Said Osage ceded and Osage trust and diminished reserve lands were not public lands of the United States, but were private lands belonging to the Osage tribe of Indians, and it was no part of the duty of the claimant as register of a United States land office to assist in disposing of said Osage ceded and Osage trust and diminished reserve lands.

6. The treaty between the United States and the Great and Little Osage Indians concluded September 29, 1865 (Indian Treaties 1873, p. 585, Article 1, lines 26,187 to 26,201), provides as follows:

"Said lands shall be surveyed and sold, under the direction of the Secretary of the Interior, on the most advantageous terms, for cash, as public lands are surveyed and sold under existing laws, including any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands; but no pre-emption claim or homestead settlement shall be recognized; and after reimbursing the United States the cost of said survey and sale, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of sales shall be placed in the Treasury of the United States to the credit of the 'civilization fund,' to be used, under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits
4 of the United States."

Said treaty in Article 2, as to the Osage trust lands (lines 26,206 to 26,215), provides:

"Which land is to be held in trust for said Indians, and to be surveyed and sold for their benefit under the direction of the Commissioner of the General Land Office, at a price not less than one dollar and twenty-five cents per acre, as other lands are surveyed and sold, under such rules and regulations as the Secretary of the Interior

shall from time to time prescribe. The proceeds of such sales, as they accrue, after deducting all expenses incident to the proper execution of the trust, shall be placed in the Treasury of the United States to the credit of said tribe of Indians," etc.

Said treaty in Article 16 (lines 26,350 to 26,361), provides:

"It is also agreed by said contracting parties, that if said Indians should agree to remove from the State of Kansas, and settle on lands to be provided for them by the United States in the Indian Territory on such terms as may be agreed on between the United States and the Indian tribes now residing in said Territory or any of them, then the diminished reservation shall be disposed of by the United States in the same manner and for the same purposes as hereinbefore provided in relation to said trust lands, except that fifty per cent. of the proceeds of the sale of said diminished reserve may be used by the United States in the purchase of lands for a suitable home for said Indians in said Indian Territory."

7. By joint resolution entitled "A resolution enabling *bona fide* settlers to purchase certain lands acquired from the Great and Little Osage tribe of Indians," approved April 10, 1869 (16 Stat. L. 55), *bona fide* settlers residing upon the land described in Articles 1 and 2 of the treaty mentioned and in part quoted in the last paragraph hereof were permitted to purchase not exceeding one hundred and sixty acres at one dollar and twenty-five ($1.25) per acre, at any time within two years from the passage of said resolution; the sixteenth and thirty-sixth sections in each township being reserved for State school purposes.

8. By the act of Congress of July 15, 1870, Section 12, 16 Stat. L. 362, provision was made for the removal of the Great and Little Osage Indians from the State of Kansas to the Indian Territory and the Indians consented thereto (Annual Report of the Commissioner of Indian Affairs, 1870, p. 6).

9. By the act entitled "An act for the relief of settlers on the Osage lands in the State of Kansas," approved May 9, 1872 (17 Stat. L. 90), the Osage trust and diminished reserve lands in the State of Kansas, excepting the sixteenth and thirty-sixth sections in each township, were made subject to disposal for cash only to actual settlers, in accordance with the general principles of the pre-emption laws.

10. The commissions and fees allowed by law to the claimant as register of the United States land office for services in disposing of the public lands under the pre-emption law, were at the date of such disposal, by virtue of the acts of April 20, 1818, and March 21, 1864, Section 4, as embodied in Section 2238 of the Revised Statutes, as follows:

"First. A fee of one dollar for each declaratory statement filed and for services in acting on pre-emption claims.

"Second. A commission of one per centum on all moneys received at each receiver's office."

The reasonable value of his services in disposing of the Osage ceded and Osage trust and diminished reserve lands was the same as that provided by said section for the disposal of public lands of the United

States, to wit: One dollar for each declaratory statement and
6 a commission of one per centum on all moneys received at the receiver's office.

11. The very large amount of additional business imposed upon the claimant by the requirement of his services in the disposal of said Osage ceded and Osage trust and diminished reserve lands, compelled him to employ an additional number of clerks to perform the clerical labor required in connection with said services, and he actually paid in salaries to said additional clerks for performing such services the sum of three thousand and nine dollars and ninety-eight cents ($3,009.98), a detailed statement of which was filed with the Commissioner of the General Land Office, but no payment of such expenses for additional salaries, or of any of the commissions or fees herein claimed was ever allowed or paid to the claimant.

12. The claimant is by reason of the premises entitled to compensation for the service, responsibility and duties required of and performed by him and the expense incurred by him as aforesaid while register of the United States land office at Humboldt, Kansas, from the first day of April, 1869, to the twentieth day of November, 1871, in disposing of the Osage ceded and Osage trust and diminished reserve lands, to a fee of one dollar for each declaratory statement, a commission of one per centum on all moneys received on the sales of said lands, and to the amount of clerk hire incurred and paid by him, particularly stated as follows:

Commissions on sales of Osage ceded land:		
Fractional calendar year ending Dec. 31, 1869	$570 21	
Calendar year ending Dec. 31, 1870	1,821 09	
Fractional year ending Nov. 20, 1871	1,781 41	
Carried forward	$4,172 71	
7 Brought forward	$4,172 71	
Commissions on sales of Osage trust and diminished reserve lands:		
Fractional calendar year ending Dec. 31, 1869	118 05	
Calendar year ending Dec. 31, 1870	867 38	
Fractional year ending Nov. 20, 1871	5,017 37	
Filing fees earned on Osage trust and diminished reserve lands	10,514 00	
Extra clerk hire on account of Osage ceded and Osage trust and diminished lands	3,009 98	
		$23,699 49

Of which amounts there are to be credited the following sums paid to him out of his commissions and fees for the purpose of making up his compensation for those years, as follows:

Part compensation paid from Osage ceded lands for—		
Calendar year ending Dec. 31, 1869.....	103 38	
Fractional year ending Nov. 20, 1871.....	186 81	
Part compensation paid from Osage trust and diminished reserve lands:		
Fractional calendar year ending Dec. 31, 1869	118 05	
Fractional calendar year ending Nov. 20, 1871	186 81	
		595 05
Amount of balance due.....		$23,104 44

13. The United States now hold, as trustee, a large sum of money belonging to the said Osage Nation of Indians which accrued from the sale and disposal of the said Osage trust and diminished
8 reserve lands, but how much of the sum above claimed to be remaining due to the claimant, as aforesaid, has been placed to the credit of the trust fund of the said Osage Nation, or how much thereof has been retained in the Treasury of the United States, or covered into said Treasury as public moneys, or otherwise, the claimant is not informed and is unable to state.

14. No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant prays judgment for twenty-three thousand one hundred and four dollars and forty-four cents ($23,104.44).

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

R. V. BELT,
ERASTUS J. TURNER,
Of Counsel.

DISTRICT OF COLUMBIA, *ss*:

Watson Stewart, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge and belief.

WATSON STEWART.

Subscribed and sworn to before me this 20th day of March, 1903.
[SEAL.] GEORGE W. TAYLOR,
Notary Public.

9 II.—*Plea of the Osage Nation.*

Filed December 14, 1903.

No. 23216.

WATSON STEWART
vs.
THE UNITED STATES and THE OSAGE NATION OF INDIANS.

For a plea to the petition of the claimant, Watson Stewart, The Osage Nation of Indians, one of the defendants named in said petition, says it is not indebted to the said claimant in the sum claimed in said petition or any part thereof or in any sum whatsoever.

LORENZO A. BAILEY,
Attorney for said Defendant.

10 III.—*Traverse.*

Filed March 8, 1904.

In the Court of Claims of the United States. December Term, A. D. 1906.

No. 23216.

WATSON STEWART
vs.
THE UNITED STATES and THE OSAGE NATION OF INDIANS.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

11 IV.—*Findings of Fact, Conclusion of Law, and Opinion of the Court.*

Filed March 21, 1904.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant, Watson Stewart, was appointed and commissioned register of the United States land office at Humboldt, in the State of Kansas, entered upon duty May 12, 1869, and served continuously until November 20, 1871.

II.

On November 23 and December 19, 1867, the General Land Office, by authority of the Secretary of the Interior, issued instructions to the registers and receivers in the State of Kansas for the rendition of services in the sale of lands ceded to the United States by article 1 of the treaty between the United States and the Great and Little Osage Indians, concluded September 29, 1865, and of the lands agreed to be held in trust for said Osage Indians by article 2 of the said treaty, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November 23, 1867.*

Register and Receiver, Humboldt, Kans.

GENTLEMEN: By the 4th article of the Sage treaty, Sept. 29, 1865, all loyal persons being heads of families and citizens of the United States or members of any tribe at peace with the United States and now residing on the lands provided by the 1st and 2d article of the treaty, to be sold by the United States, shall have the privilege at any time within one year after the ratification of this treaty of buying a quarter section each, at one dollar and twenty-five cents per acre; such quarter section to be selected according
12 to legal subdivisions of surveys, and to include as far as practicable the improvements of the settler.

This treaty was ratified by President on 21st January, 1867, hence the above privilege will expire 21 Jan'y, 1868.

The plats of survey having been nearly all furnished you, I have to direct that you publish a notice for one week in a daily paper having the largest circulation in the neighborhood of said lands; that you will prepare, from and after a certain day to be designated by you and to be as early opened as possible to hear and adjudicate, the claims of settlers claiming the privilege of said 4th article.

You will require the affidavit of the party as to loyalty and proof that they were residing on the lands before and at the date of the

treaty September 29, 1865, and that have bona fide settlement and improvements on the tracts, the character and extent of the same to be fully shown and payments made with cash.

In reporting the entries you will divide them into two classes, one comprising the entries under the 1st article, or the lands ceded and sold to the United States for $300,000, and the other enclosing the entries on lands under the 2d article of the treaty, being those held in trust for the Indians.

You will issue a new series of certificates and receipt for each class, commencing in each with No. 1. The first class you designate as Osage lands and the other as Osage Indian trust lands, and I desire that particular care shall be taken in all cases to endorse clearly on each certificate and receipt, as also on your abstracts, the name of the class to which the paper belong.

Special instructions with forms will be sent in a few days to the receiver in regard to the manner of rendering his accounts of these sales.

Very respectfully, your obt. sert.,
JOS. S. WILSON, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December 19, 1867.*

Register and Receiver, Humboldt, Kas.

GENTLEMEN: Referring to my letter of the 23 ult., inclosing instructions respecting the manner of keeping the records, &c., pertaining to the sale of lands ceded under 1st and 2 article of the treaty of 29 September, 1865, with the Great and Little Osage Indians, I have now to state that the following rules are to be observed by the receiver in keeping and rendering his accounts thereof, forms of which are herewith inclosed, viz:

Special accounts are to be kept of the proceeds of sales of the lands disposed of under respective articles of the treaty transcript from which are to be rendered to this office at the termination of each month and quarter.

The monthly account is to embrace to the credit of the United States the aggregate area of the land sold during the same, with the amount of postage money received therefor, and to the debit
13 of the United States the amount of money paid into the Treasury on account thereof.

The quarterly accounts are to embrace both the detailed and condensed forms, the first showing consecutively the several entries made during the quarter to the credit of the United States and to the debit of the same, the sums paid into the Treasury on account thereof, the condensed account the same items in aggregate. The receiver when making a deposit to state specifically the *fund* to which it is applicable, debiting the amount in like manner in his accounts thus:

To the credit of the "Civilization fund," under I Article, treaty 29 September, 1865.

To the credit of the "Great and Little Osage Indians," under II Article, treaty 29 September, 1865.

The register and receiver will be allowed a commission of one per cent. each on the proceeds of the sales of these lands, with limitation, as a matter of course, to the legal maximum of $2,500, inclusive of commissions and fees, &c., on the disposal of the *public lands*, the payment of which is to be made by the receiver in his capacity of disbursing agent and to be debited in a special account, together with such other expense incident to the sale of the lands alluded to as may be authorized by law and instructions.

Please acknowledge the receipt of this.

Very respectfully, your obt. sevt.,

JOS. S. WILSON,
Commissioner.

March 28 and 31, 1871, instructions were issued to said registers and receivers to take charge of the sale of lands contained in the diminished reservation of said Osage Indians, referred to in article 16 of said treaty, which were authorized to be sold by section 12 of the act of July 15, 1870 (16 Stat. L., 362), as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March 28, 1871.*

Register and Receiver, Augusta, Kansas:

Referring to our letter to you of the 16th inst., I have now to give you the following instructions relative to the disposal of the Osage trust and diminished reserve lands in your district under the 12th section act of July 15, 1870.

Under this act these lands, except the 16th and 36th sections which were treated of in our letter to you of the 4th inst., under the decision of the Secretary dated 14th ult., are opened to settlement *after survey*, and are required to "be sold to actual settlers only, said settlers being heads of families, or over 21 years of age, in quantities not exceeding 160 acres in square form to each settler, at the price of $1.25 per acre, payment to be made in cash within one year from date of settlement or the passage of this act."

* * * * * * *

The officers will be allowed the same fee for filing as is allowed under the preemption laws, viz, $1.00 to each officer; this fee the receiver will account for in his receiver's account of *public lands*, stating the item as "fees" for (number) declaratory statements filed on Osage Indian trust and diminished reserve lands. They will also be allowed a commission of one per cent. on the cash value of the lands sold.

14 The receiver will render his account of these Indian lands in the following manner, to wit:

"He will in his receiver's account credit the United States with all moneys received during the quarter from the sale of the lands and charge the U. S. with amount deposited and the amount of authorized disbursements for the quarter.

"In his disbursing account he will charge the United States with

the authorized disbursements and credit the U. S. the said amount as carried to the receiver's account and therein charged. Voucher for payment must accompany the disbursement account; otherwise they will be disallowed.

"Nothing, however, shall be herein construed as authorizing the register and receiver to receive more than the maximum fees and commissions of $2,500 per annum now allowed by law, and the receiver in adjusting his accounts will take care to first ascertain how much short of the maximum the receipt from public lands, including the fees received from declaratory statements on the Osage lands, will bring their fees and commissions, and will then charge to the Indian fund only so much commissions as will bring their compensation to the maximum."

* * * * * * *

You will observe that these claims only refer to the diminished reserve, therefore none of the Osage trust lands are embraced in its provisions.

Be pleased to acknowledge the receipt of this.

Very respectfully,

(Signed) WILLIS DRUMMOND,
Commissioner.

Approved:

(Signed) C. DELANO,

III.

In accordance with the instructions set forth in the last preceding finding, the claimant, while register of the land office at Humboldt, Kans., performed services in the sale of lands ceded by said Osage Indians by section 1 of said treaty; of lands held in trust by the United States under section 2 of said treaty, and of lands included within the diminished reservation of said Indians under section 16 of said treaty.

The maximum compensation of $3,000 per annum, in accordance with the instructions from the General Land Office, set forth in Finding II, for each year, was duly paid by the United States to the claimant.

IV.

The following tabulated statements show the total receipts from sales and for filing fees collected for the register during the term of service of Register Stewart from May 12, 1869, to November 20, 1871, inclusive; also the total fees and commissions earned by and paid to him each year on each class of lands, and the maximum compensation allowed by law for each year, or part of year, of his term of office.

15 *Receipts from Sales of Osage Ceded Lands, Article 1 of Treaty.*

Period.	Receipts.	1 per cent. commissions.	Coms. paid Stewart.
1869, from May 12	$57,021.00	$570.21	$103.38
1870, whole year	182,109.38	1,821.09	0.00
1871, to Nov. 20, inc	178,925.45	1,789.25	186.81
	$418,055.83	$4,180.55	$290.19

Receipts from Sales of Osage Trust and Osage Diminished Reserve Lands, Articles 2 and 16.

Period.	Receipts.	1 per cent. commissions.	Coms. paid Stewart.
1869, from May 12	$11,805.26	$118.05	$27.98
1870, whole year	86,738.85	867.38	0.00
1871, to Nov. 20, inc	487,996.30	4,879.96	186.81
	$586,540.41	$5,865.39	$214.79
1871, to Nov. 20, filing fees earned		4,286.00	
Earned by Register Stewart		$10,151.39	

Total Salary, Fees, and Commissions Earned by Register Stewart from All Sources During Each Year of Service.

Period.	Public lands.	Osage Ceded.	Osage Trust.	Total.
1869, from May 12	$1,795.72	$750.21	$118.05	$2,483.98
1870, whole year	3,293.60	1,821.09	867.38	5,982.07
1871, to Nov. 20, inc	4,230.83	1,789.25	9,165.96	15,186.04
	$9,320.15	$4,180.55	$10,151.39	$23,652.09

Salary, Fees, and Commissions Paid Register Stewart on Each Class of Lands During Each Year of Service.

Period.	Public lands.	Osage Ceded.	Osage T. & D. R.	Total.
1869, from May 12	$1,692.34	$103.38	$27.98	$1,823.70
1870, whole year	3,000.00	0.00	0.00	3,000.00
1871, to Nov. 20	2,665.75	186 81	186.81	3,039.37
	$7,358.09	$290.19	$214.79	$7,863.07

Maximum Compensation Allowed by Law, and Amount Paid Register Stewart.

1869, from May 12,	maximum.	$1,912.09	Paid reg.	$1,823.70	Short .. $88.39
1870, whole year,	" .	3,000.00	" .	3,000.00	0.00
1871, to Nov. 20, inc.,	" .	2,665.75	" .	3,039.37	Excess.. 373.62
Maximum.		$7,577.84	Paid.	$7,863.07	" $285.23

Total Fees and Commissions Earned, Paid and Unpaid, on Osage Trust and Diminished Reserve Indian Lands.

Year.	Earned.	Paid.	Unpaid.
1869, from May 12.	$118.05	$27.98	$90.07
1870, whole year.	867.38	0.00	867.38
1871, to Nov. 20, inc.....	9,165.96	186.81	8,979.15
	$10,151.39	$214.79	$9,936.60
Less excess heretofore paid Stewart	.....	....	285.23
Net earnings unpaid.....	.....	....	$9,651.37

16 V.

The total amount received on sales of Osage ceded lands was $1,055,162.01. The total amount received as filing fees of $2 for each declaratory statement on Osage ceded lands was $8,570.

The total amount received on sales of Osage trust and diminished reserve lands was $9,608,156.27. The total amount received as filing fees of $2 for each declaratory statement on Osage trust and diminished reserve lands was $130,596.

The filing fees on both the ceded and the trust and diminished reserve lands were covered into the Treasury of the United States.

The total amount of money held in trust by the Government for said Osage Indians arising out of the sale of their lands under said treaty of September 29, 1865, is $8,327,439.07, on which interest at 5 per cent. is paid by the United States, amounting annually to $416,371.95.

Conclusion of Law.

On the foregoing findings of fact, the court decides, as a conclusion of law, that the claimant is not entitled to recover, and that his petition should be dismissed.

Opinion.

WRIGHT, *J.*, delivered the opinion of the court:

Claimant brings this suit as one of the registers under the authority of the act of Congress approved March 3, 1903 (32 Stat. L., pt. 1-1010), which provides, in effect, that any one or more of the regis-

ters and receivers of the United States land office in the State of Kansas who had the responsibility of the sales of the Osage ceded, trust, and diminished reserve land, under the treaty of September 29, 1865, with the Osage Indians, and the acts of Congress for carrying the treaty into effect, may bring suit in this court against the Osage Nation and the United States to determine the claim of the plaintiff or plaintiffs for commissions or compensation for the sale of said lands or any service or duty connected therewith, and by that act this court is given jurisdiction to hear and determine the cause, and to render judgment therein on the merits.

The above mentioned treaty (Ind. Treaties, 1873, 585) as far as it is material to this decision to state, in effect required the ceded lands to be surveyed and sold, under the direction of the Secretary of the Interior, on the most advantageous terms for each (the United States and the Indians), as public lands are surveyed and sold under existing laws, withholding, however, preemption claims and homestead settlements, the net proceeds of such sales remaining after cost of survey and sale had been paid, and the sum of $300,000 placed to the credit of the Osage Indians, to be placed to the credit of the "Civilization fund," for the education and civilization of Indian tribes in the United States. The trust lands were required to be surveyed and sold for the benefit of the Osage Indians at a price not less than $1.25 per acre, as other lands are surveyed and sold, under such rules and regulations as the Secretary of the Interior shall from time to time prescribe, and the proceeds of such sales, after deducting all expenses incident to the proper execution of the trust, to be placed in the Treasury of the United States to the credit of the Osage Indians. And it was agreed, that if the Indians should
17 remove from the State of Kansas which they did), the diminished reserve lands should be disposed of in the same manner and for the same purposes provided in relation to the trust lands, except that 50 per cent. of the proceeds thereof might be used in the purchase of lands for a suitable home for the Osage Indians in the Indian Territory.

Appropriate legislation was passed by Congress to carry into effect the treaty and to sell the lands mentioned therein in accordance with its terms. The Secretary of the Interior, November 23 and December 19, 1867, issued to the registers and receivers at Humboldt, Kans., his instructions containing rules and regulations relative to the sale of the ceded and trust lands, and also on March 28, 1871, relative to the diminished reserve lands, like instructions, in all of which it was explicitly stated, in effect, that the registers and receivers would each be allowed a commission for the sale of the lands of all classes—ceded, trust, and diminished reserve—of 1 per cent. each on the proceeds of the sales, with limitation to the legal maximum compensation provided by law, inclusive of commissions and fees on the disposal of public lands; and in the instructions of March 28, 1871, the former instructions relative to compensation were restated and epitomized in the following language: "Nothing, however, shall be herein construed as authorizing the register and receiver to receive more than the maximum fees and commissions of $2,500 per annum now

allowed by law, and the receiver in adjusting his accounts will take care to first ascertain how much short of the maximum the receipt from public lands, including the fees received from declaratory statements on the Osage lands, will bring their fees and commissions, and will then charge to the Indian fund only so much commissions as will bring their compensation to the maximum."

The treaty in question constituted the contract between the United States and the Osage Indians by which the latter ceded and surrendered all their rights and interests in the lands embraced in the Kansas reservation, and is to be construed like other contracts. Every provision and stipulation in the contract should be given the force and effect intended by the parties thereto at the time it was entered into. It will not be disputed that it was the intention of the parties that the sale of the lands should produce to the beneficiaries, the Indians, as large a net sum as was reasonably practicable. It was stipulated in the contract that the lands should be surveyed and sold under the direction of the Secretary of the Interior on the most advantageous terms, as public lands are surveyed and sold, and under such rules and regulations as that officer might from time to time prescribe. By the terms of the contract the Indians were entitled to the judgment and discretion of the Secretary of the Interior, and to have that officer use his valuable services in the direction of the sales of their lands. This they might well have regarded as a strong protection to their rights and interests, and was no doubt a considerable inducement for them to enter into the contracts as they did. In accordance with this contract as regards the Indians, and otherwise in obedience to law, the Secretary of the Interior did exercise his judgment and discretion in the sale of the lands, and among other things added to the duties of the register and receiver the sales of the same, fixing the compensation for such services, in effect, at the difference between the commissions and fees on disposal of pub-
18 lic lands and the maximum compensation allowed by law, and in no event should such compensation exceed the legal maximum.

While the rules and regulations so prescribed by the Secretary of the Interior were in force the claimant accepted the appointment and qualified as register. He performed the services so required of him, and received the maximum compensation provided therefor by law and the regulations of the Secretary of the Interior, without objection or protest, or claim for more compensation, so far as we discover in the record, until in February, 1902, thirty years after the last service was performed, when he initiated this claim in Congress, and by them it has been sent to this court for our determination. We are of the opinion that claimant voluntarily undertook to do, and did perform, the services described in his petition for the compensation he has already received, and that neither the United States nor the Osage Nation is liable to him for further compensation, nor did such liability exist at any time.

The case of *Brindle* (110 U. S., 688), upon which much reliance is placed by counsel for claimant, is easily distinguished from the case presented here. In that case it was said that so far as anything

appeared in the record then before the court, the appointment of Brindle was not made because he was receiver of the land office. In the present case no specific personal appointments were made, but the registers and receivers generally were designated to perform the service, and the duties were assigned to their respective offices without regard to the personal incumbents then existing. Claimant was not at the time of such designation and assignment of duties a register, but was appointed, and accepted such appointment, after the disposal of the ceded and trust lands had been attached to the office in which he qualified and thereby obligated himself to perform all such duties as appertained thereto. The disposal of the diminished reserve lands was later included, but by continuing in the service claimant must be considered as having acquiesced in that action. Having voluntarily assumed to discharge all the duties of the office, he must be presumed to have known what the duties were, and that the services for which he now seeks further compensation were engagements included in his acceptance of the office at the time he entered upon the performance of its duties, which is further evidenced by his continued service without objection, and for the designated compensation. In the present case the appointment of claimant to the office of register included the appointment to do the business appertaining to the sale of the identical lands in question, without special mention.

In conformity to the views herein expressed, the petition of the claimant will be dismissed.

19 V.—*Judgment of the Court.*

No. 23216.

WATSON STEWART
v.
THE UNITED STATES and THE OSAGE NATION OF INDIANS.

At a Court of Claims held in the City of Washington on the 21st day of March, 1904 judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, the said Watson Stewart, be and the same is hereby dismissed.

BY THE COURT.

20 VI.—*Application for and Allowance of Appeal.*

No. 23216.

WATSON STEWART
v.
THE UNITED STATES and THE OSAGE NATION OF INDIANS.

Now comes the claimant, Watson Stewart, and appeals to the Supreme Court of the United States from the judgment of this court

entered on the 21st day of March, 1904, dismissing his petition and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed May 31, 1904.

Ordered that the aforesaid application for appeal be allowed as prayed for.

April 9, 1906.

BY THE COURT.

21 Court of Claims.

No. 23216.

WATSON STEWART
v.
THE UNITED STATES and THE OSAGE NATION OF INDIANS.

I, John Randolph, Assistant Clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law, and of the opinion filed by the Court; of the judgment of the Court; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 16 day of April A. D., 1906.

[Seal Court of Claims.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

Endorsed on cover: File No. 20,199. Court of Claims. Term No. 256. Watson Stewart, appellant, *vs.* The United States and The Osage Nation of Indians. Filed April 16th, 1906. File No. 20,199.